IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7264 of 2007()

O.R.NO.8/07 OF FOREST RANGE OFFICE, OTTAPALAM (KULAPULLY SECTION)

: PETITIONER/2ND ACCUSED

SATHEESH, AGED 22 YEARS,
S/O SUKUMARAN, PAPPUNATHODI PARAMBIL,
MARAYAMANGALAM SOUTH, PALAKKAD DISTRICT.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
FOREST RANGE OFFICER, OTTAPALAM
(KULAPULLY SECTION), THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7264 of 2007

Dated this the 28th day of November, 2007

ORDER

Application for anticipatory bail. Petitioner is the 2nd accused. Altogether there are 4 accused persons. Accused 1, 3 and 4 have already been arrested and enlarged on bail, submits the learned counsel for the petitioner. The alleged incident took place on 12.09.07. Accused 1 and 2 were allegedly found cutting sandal wood in a reserve forest. When the forest officials approached them, the petitioner-2nd accused allegedly took to his heels and he could not be arrested. The 1st accused was arrested. The identity of the accused who ran away was ascertained from the 1st accused. Contemporaneous seizure mahazar as well as occurrence report reveal the name of the petitioner as the accused who had run away from the scene of the crime. The petitioner is not shown to have any criminal antecedents. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Except the alleged statement of the co-accused, there is absolutely no material to point to the complicity of the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail. He shall co-operate with the investigators, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations are serious. The mere fact that the detecting officials could not apprehend the petitioner may not weigh with the Court as sufficient reason to grant him anticipatory bail. Confession statement of the co-accused reveal complicity of the petitioner. Contemporaneously at the scene of occurrence, the identity of the petitioner as the one who ran away has been ascertained and incorporated in the relevant documents. The petitioner has no case of any malafides against the co-accused or the forest officials. In these circumstances, the extraordinary equitable discretion under Section 438 Cr.P.C may not be invoked. The petitioner may be permitted to surrender and seek regular bail, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-